

CROSS  
SUBMISSION

# Review of the Grocery Supply Code

## [Sub-Title]

4 October 2024

**To:** Commerce Commission

**Name of Submitter:** Horticulture New Zealand

### Contact for Service:

[Redacted contact information]

# OVERVIEW

## Submission structure

- 1 Part 1: HortNZ's Role
- 2 Part 2: Cross submissions on behalf of HortNZ

## Our submission

Horticulture New Zealand (HortNZ) made a submission on the Review of the Grocery Supply Code and welcomes any opportunity to continue to work with the Commerce Commission and to discuss our submission.

The details of HortNZ's cross submissions and decisions we are seeking are set out below.

# HortNZ's Role

## Background to HortNZ

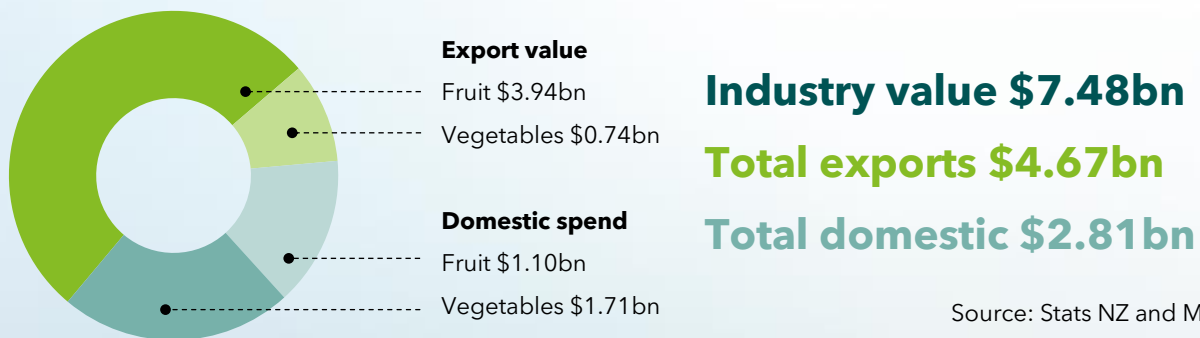
HortNZ represents the interests of approximately 4,200 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

There are approximately 80,000 hectares of land in New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain; and plays a key role in helping to achieve New Zealand's climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown to serve the domestic market.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.



# Further Submission

1. Horticulture New Zealand's (HortNZ) cross submissions are contained in the attached table below.
2. HortNZ represents commercial fruit and vegetable growers, so represents a relevant aspect of the public interest.
3. HortNZ is not a trade competitor and could not gain any advantage in trade competition through this further submission.

## Further submission on behalf of HortNZ on the Review of the Grocery Supply Code

Where possible, HortNZ has chosen to only respond to those submission points particularly relevant to fresh fruit and vegetable sales. Overall, we support the submission of New Zealand Food and Grocery Council and welcome any opportunity to be involved in further engagement.

Submitter	Topic	Submission point	Support/oppose	Reason	Decision sought
Foodstuffs North and South Island	Fresh produce - delisting	The supplier is the wholesaler and not the grower (para 30).	Support	HortNZ agrees that the supplier under the Grocery Supply Code, as operative, is typically the wholesaler and not the grower.	<p>Transactions between fresh produce wholesalers and growers should be covered by the Code.</p> <p>Growers interactions with the supply chain is the first point of sale, only those transactions direct to RGR's covered by the Code are covered.</p>
Foodstuffs North and South Island	Fresh produce - delisting	The Code should set out when fresh produce is considered listed, such as when an RGR has specifically committed to purchase an agreed volume of a growers' produce (para 31).	Support	More clarity over when a product is considered listed is a good thing.	Clear definition in the Code of when a fresh produce product is considered "listed".

Foodstuffs North and South Island	Fresh produce - delisting	The EU directive on unfair trading practices focuses on cancellation of orders at such short notice that the supplier cannot be reasonably expected to find an alternative buyer or use for the product (footnote 13).	Oppose	<p>The EU has a vastly different trading environment than New Zealand, where suppliers could reasonably find another major market for large volumes of produce if one retailer rejected their supply. In New Zealand, with only two major retailers, growers whose product is turned away do not reliably have another option to sell it.</p> <p>It is important to note there are cases where there are products grown to specific market specs, or niche varieties at request of a retailer, wholesaler or food subscription service and there is not always an alternative market for these.</p>	Do not accept the EU directive language around cancellation of orders of perishable agricultural and food products.
Foodstuffs North and South Island	Fresh produce - rejection	24 hours is too short of a time period for fresh produce rejections, and 48 hours would be preferred (para 33).	Oppose	<p>It is the responsibility of the retailer's produce manager to check for defects before signing for produce. They should know immediately whether a product has quality control issues.</p> <p>24 hours is appropriate given the short shelf-life of fresh fruits and vegetables. After more than 24 hours, damage could occur to the fresh produce that is out of the control of the supplier.</p>	Retain 24 hour time cut off for rejecting fresh produce.

Foodstuffs North and South Island	Opportunities for additional protections for suppliers	When negotiating a new grocery supply agreement, retailers should provide suppliers with a one-page information sheet with clear guidance on any exceptions to that agreement (para 40-41).	Support	This is a practical improvement to transparency for suppliers to assist them to make informed decisions.	Introduce a standardised format for RGR's to provide suppliers with clear guidance on any exceptions their supply agreement before the agreement is signed.
Woolworths Group New Zealand	Guidance on the areas where the objectives of the Code could be better achieved	WWNZ has not had guidance or communications from the Commerce Commission on these areas (para 3.4a).	Support	Further guidance, for both RGRs and suppliers, would greatly help with Code simplification. Plain-language guidance and case studies, with fresh fruit and vegetable examples, would be of great value to horticultural direct suppliers.	Provide plain-language guidance and case studies for a grower-supplier audience.
Woolworths Group New Zealand	Contracting for flexibility, which the Code allows, is not "contracting out" of the Code	WWNZ's grocery supply agreements include flexible provisions which are not "contracting out" of the Code. Flexible provisions can be beneficial to suppliers, and the Commerce Commission has not articulated its specific concerns	Oppose	Whether these flexible provisions are "contracting out" of the Code is just semantics. The reality is that default grocery supply agreements which do not guarantee the protections of the Code should not be a common occurrence. The RGR's should only be able to include clauses using the Code's loopholes in rare circumstances when it is in the supplier's best interest.	Amend the Supply Code to limit the circumstances where "contracting out" of provisions is permitted to when there is a clear benefit to the supplier, and not by default.

		with flexible provisions.			
Woolworths Group New Zealand	The good faith obligations should be reciprocal	Large multinational suppliers have more bargaining power than WWNZ and have a larger impact on consumer prices than any other cost or our margin (para 4.4a).	Oppose	<p>It is unclear what impact the bargaining power of Coca Cola or Kellogg's has to do with the price of New Zealand lettuce.</p> <p>While the RGR's negotiations with big multinationals may have different dynamics, it is well-known in the industry that they take exorbitant margins on fresh produce.</p> <p>It should not be lost that fruit and vegetable growers are price-takers due to the perishable nature of their product and limited alternative markets. We constantly hear from growers who are being paid below the cost of production or with minimal profit, only to see the item sold for 2-8x the price in stores.</p>	Recognise that the RGR's take massive margins on fresh produce and that the power imbalance between growers and supermarkets is huge due to the nature of fresh produce.
Woolworths Group New Zealand	The Code should apply to all grocery retailers of substantial size in New Zealand	All retailers should be covered by the Code.	Support	HortNZ has long advocated for all grocery retailers and fresh produce wholesalers to be subject to the Code, especially since most growers do not sell directly to one of the RGR's.	Apply the Code to all grocery retailers, including food subscription services, and all fresh produce wholesalers in New Zealand.



New Zealand Food and Grocery Council	The ability to contract out of certain of the protections in the Code	In their initial Grocery Supply Code offerings, the RGS's contracted out of nearly all of the provisions permitted under the Code by default. These protections should be the default, and "contracting out" should only be permitted when there is a clear benefit to the supplier and in exceptional circumstances (para 4.5-4.11).	Support	Since our July 2023, HortNZ has raised concern that the ability to "contract out" of provisions creates a loophole for retailers to continue unfair practices.	Amend the Supply Code to limit the circumstances where "contracting out" of provisions is permitted to when there is a clear benefit to the supplier, and not by default.  The Commission should provide template options and case studies which suppliers can reference when negotiating their supply agreements.
New Zealand Food and Grocery Council	The burden is on suppliers to monitor the RGRs' compliance with the Contracting Out Provisions	Suppliers have the burden of requesting an explanation from RGR's why their conduct is (or isn't) reasonable. The fear of retaliation makes it unlikely many suppliers will make this choice (para 4.15-4.17).	Support	The concern of retaliation is particularly significant for fresh fruit and vegetable growers, due to the perishable nature of fresh produce and the lack of options for domestic sale at volume.	RGR's should bare the burden of providing written explanation as to why the criteria of the Contracting Out Provisions is met, without suppliers having to request it.

New Zealand Food and Grocery Council	Good faith	There is a lack of guidance about what constitutes good faith. 'Fair dealing' may be a more specific and appropriate term (para 4.28-4.32).	Support	HortNZ has heard from growers that 'fair trade' may be a more appropriate, specific and effective requirement than dealing in good faith.	Add a principle of 'fair trade' to the Code.
New Zealand Food and Grocery Council	Protection of confidential information and anti-retaliation measures	Suppliers are hesitant to raise issues with the Commission due to its obligations under the Official Information Act 1982 (OIA) and a fear of retaliation (para 4.41-4.44).	Support	This is also a concern from growers. Growers have been blacklisted in the past for speaking out against unfair practices.	Address how suppliers can communicate with the Commerce Commission without fear of retaliation.